Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

THOMAS J. QUINN,

Petitioner,

v.

JOHN SHIREY, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Where a public employer deprives an employee of his liberty interest under the Fourteenth Amendment by making stigmatizing and false public statements about the employee in connection with the termination of his employment, is the employer required under fundamental constitutional principles of due process to notify the employee that he is entitled to a name-clearing hearing?

2. Where an employee has been terminated from his public employment under circumstances in which his professional reputation has been stigmatized, must the employee's complaint brought pursuant to 42 U.S.C. § 1983 contain affirmative allegations that the employee specifically requested and was denied a name-clearing hearing by the employer in order to survive a motion to dismiss under Federal Civil Rule 12(b)?

LIST OF PARTIES

Petitioner is Thomas J. Quinn.

Respondents are the City of Cincinnati; the City Manager of Cincinnati John Shirey; Hamilton County; Hamilton County Commissioners Robert Bedinghaus, John Dowlin, and Thomas Neyer; and Hamilton County Administrator David Krings.

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Thomas J. Quinn, by and through counsel, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-20a) is reported at 293 F.3d 315. The order and judgment of the district court (App., *infra*, 21a-25a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 10, 2002. App. *infra*, 1a. The Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part, that no "State [shall] deprive any person of life, liberty, or property, without due process of law." 42 U.S.C. § 1983 provides, in pertinent part, that "Every person who, under color of any statute,. . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law. . . ."

STATEMENT OF THE CASE

From 1992 until 1998, Thomas Quinn was employed as the director of the Metropolitan Sewer District ("MSD"), a jointly-operated venture in which the City of Cincinnati,

Ohio (the "City") was responsible for the day-to-day management of the MSD and Hamilton County, Ohio (the "County") was ultimately responsible for its operation. From the Spring of 1997 until the Spring of 1998, various City and County officials made statements to multiple media outlets that Mr. Quinn was not performing his duties in an honest, ethical or legal manner, and was, in fact, a corrupt public administrator who was misusing his office for personal gain. Specifically, these public statements included references to "allegations of wrongdoing" and "alleged improprieties" by Mr. Quinn; to "egregious" and "questionable practices" by Mr. Quinn; to "favoritism" and "special treatment" by Mr. Quinn; and to the existence of a grand jury "probe" that had "deepened from charges of bad management to potential criminality." Defendants Bedinghaus and Neyer publicly stated that Mr. Quinn had "trampled over" the intentions of the County by creating "career ending" embarrassments. Members of Cincinnati's City Council publicly called for Mr. Quinn's termination.

All of the statements of the City and County officials which stated or implied that Mr. Quinn was a corrupt and dishonest public administrator were false, and the officials knew at the time they made them that these accusations were not true. These statements, however, had the effect of impugning Mr. Quinn's professional reputation and personally and professionally stigmatizing him in the community and in his field of employment.

In the midst of this firestorm, Mr. Quinn wrote to Mr. Shirey asserting his innocence of any wrongdoing and requesting that any adverse job action against him be deferred pending completion of all audits and investigations into his conduct, which Mr. Quinn knew would ultimately clear his name. Notwithstanding Mr. Quinn's request, Mr. Shirey

informed Mr. Quinn that same day that his employment would be terminated the next day if he did not submit his resignation immediately. Based on this ultimatum, Mr. Quinn was effectively stripped of his authority and responsibilities and was placed under such circumstances that he was forced to resign. The record from the trial court does not indicate that anyone from the City or County informed Mr. Quinn that he had the right or opportunity to publicly clear his name in a meaningful manner. Moreover, Defendants have never announced the results of any of the audits or investigations which caused Mr. Quinn to be vilified in the public eye and ultimately terminated. Finally, neither the County nor the City has ever offered or afforded Mr. Quinn the opportunity to clear his name. As a result, Mr. Quinn's ability to obtain employment in his field has been substantially impaired.

Mr. Quinn filed a lawsuit against Defendants on July 20, 1999, pursuant to 42 U.S.C. § 1983, alleging that Defendants made false and stigmatizing statements about him in connection with the termination of his employment, thus depriving him of his liberty interest without due process of law. Defendants moved for dismissal under Federal Rule of Civil Procedure 12(b) for failure to state a claim. On September 12, 2000, the district court dismissed the case on the grounds that Mr. Quinn had not suffered a deprivation of his liberty interest without due process of law because his complaint contained no allegation that he had requested and been denied a name-clearing hearing by the City or County. App., *infra* 21a-24a. On October 6, 2000, Mr. Quinn filed a timely notice of appeal to the Sixth Circuit. The Court of Appeals affirmed the decision of the district court, holding that an employer does not have an affirmative duty to inform an employee of his right to a name-clearing hearing and that Mr. Quinn had not sufficiently requested a name-clearing hearing. App., *infra* 1a-20a.

REASONS FOR GRANTING THE PETITION

The United States Constitution confers to all citizens the basic right to be free from the deprivation of a liberty interest by a state without due process. U.S. Const. amend XIV § 1. In *Board of Regents v. Roth*, 408 U.S. 564 (1972), the Court confirmed a public employee's constitutional due process right to be free from the stigma of false accusations associated with termination from public employment. "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971). The *Roth* Court specified that "[t]he purpose of such notice and hearing is to provide the person an opportunity to clear his name." 408 U.S. at 573 fn. 12. Citing to *Roth*, the Court has further outlined the procedure for dealing with a liberty interest deprivation: "Assuming all of the other elements necessary to make out a claim of stigmatization under *Roth* and Bishop, the remedy mandated by the Due Process Clause of the Fourteenth Amendment is 'an opportunity to refute the charge.'" *Codd v. Velger*, 429 U.S. 624, 627 (1977).

I. The Sixth Circuit's decision that a public employer need not inform a terminated employee of his right to a name-clearing hearing when that employee's liberty interests have been infringed conflicts with the decisions of this Court, the decisions of other circuits and the nature and purpose for liberty interest protection.

In *Quinn v. Shirey*, the Sixth Circuit noted that it "has never imposed an affirmative duty on an employer to apprize the employee of his right to a name-clearing hearing." App.,

infra 15a. Instead, the Sixth Circuit, like the Fifth Circuit, placed an affirmative duty on the employee to request a hearing, even if the employee is never made aware of the right. *See Gillum v. Kerrville*, 3 F.3d 117, 121 (5th Cir. 1993); *Rosenstein v. Dallas*, 876 F.2d 392 (5th Cir. 1989) *rehearing granted and opinion reinstated in relevant part by* 901 F.2d 61 (5th Cir. 1990).[1] Citing the *Quinn* opinion in a recent decision, the First Circuit has similarly added the requirement that the stigmatized employee must request a name clearing hearing to establish a claim for the deprivation of a liberty interest without due process. *See Wojcik v. Massachusetts State Lottery Commission*, __ F.3d __, 2002 WL 1880381 (1st Cir. 2002).

The position taken by the First, Fifth and Sixth Circuits is directly at odds with the stance taken by at least three other Circuits which have held that the employer is obligated to inform an employee of his right to a name-clearing hearing and offer him that hearing. *See Buxton v. Plant City*, 871 F.2d 1037, 1046 (11th Cir. 1989) ("We hold that a public employer is required to provide the opportunity for a post-termination name-clearing hearing when stigmatizing information is made part of the public records, or otherwise published. *Notice of the right to such a hearing is required.*") (emphasis added); *Richardson v. Orangeburg School District No. 1*, No. 94-2092, 1995 WL 255941, *3 (4th Cir. May 3, 1995) (unpublished) (holding that there was "no evidence that Richardson had notice that he was being given an opportunity to 'clear his name,' let alone notice of a

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[1] *Ludwig v. Board of Trustees*, 123 F.3d 404 (6th Cir. 1997), the primary Sixth Circuit case relied upon by the court in *Quinn*, derived its liberty interest test directly from the test developed in the Fifth Circuit cases of *Gillum* and *Rosenstein*.

hearing 'conducted specifically for the stated purpose of allowing him to attempt to refute the charges against him.'"); *Lyons v. Barrett*, 851 F.2d 406, 410 (D.C. Cir. 1988) ("The obligation to offer [a name-clearing hearing] rested with the GPO, and it failed to do so.").[2] As a result of this split among several of the circuits, the Court's review is necessary to resolve the important and recurring issue of whether a public employer has a duty to inform an employee of his right to a name-clearing hearing following a termination process in which the employee's professional reputation has been stigmatized.

The Sixth Circuit's ruling in *Quinn* also directly conflicts with the precedent established by this Court. In situations where a public employee's liberty interest is at stake, the Supreme Court has never made it the duty of the employee to request a hearing in order to qualify for a name-clearing hearing. In fact, the Court has consistently maintained that if an employee establishes that his public employer made false and stigmatizing statements in connection with his termination, notice and an opportunity to be heard are "the remedy mandated by the Due Process Clause." *Codd*, 429 U.S. at 627. A stigmatized employee "*must be given* an opportunity" to refute the statements made. *Perry v. Sindermann*, 408 U.S. 593, 603 (1972) (emphasis added). In *Constantineau*, 400 U.S. at 437, the Court held that where "a person's good name, reputation, honor, or

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[2] Moreover, unlike the tests of the First, Fifth and Sixth Circuits, the tests of several other circuits to determine whether a liberty interest violation has occurred do not even require the employee to affirmatively request a hearing. *See Townsend v. Vallas*, 256 F.3d 661, 669-70 (7th Cir. 2001); *Speer v. Wynne*, 276 F.3d 980, 984 (8th Cir. 2002); *Mustafa v. Clark County School District*, 157 F.3d 1169, 1179 (9th Cir. 1998).

integrity is at stake because of what the government is doing to him, *notice and an opportunity to be heard are essential*." (emphasis added). The language of the Court's decisions contemplates a scenario in which the employer offers the employee the opportunity to clear his name. The Court has never required an employee, as a condition precedent to a cognizable cause of action, to specifically request a hearing, the existence of which he may not even be aware.

The First, Fifth and Sixth Circuits, however, have modified the test originally proposed by this Court to include a requirement that the employee affirmatively plead a request for and a denial of a name-clearing hearing as a condition to recovery. The Court's decisions prior to the development of the tests utilized by these circuits never included such a requirement, and the cases since then have not addressed this central point.

The Sixth Circuit's decision in *Quinn*, if permitted to stand, effectively undermines the principle that to be effective, a waiver of a constitutional right must be knowing and voluntary. The Court has consistently held that an individual must be given notice of a constitutional right, and the waiver of that right must be knowing and voluntary. *See Godinez v. Moran*, 509 U.S. 389, 400 (1993) ("a trial court must satisfy itself that the waiver of his constitutional rights is knowing and voluntary."); *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) ("It has been pointed out that 'courts indulge every reasonable presumption against waiver' of fundamental constitutional rights and that we 'do not presume acquiescence in the loss of fundamental rights.'") (internal citations omitted); *D.J. Overmyer Co., Inc. v. Frick Co.*, 405 U.S. 174, 188 (1972) (Douglas, J., Concurring) (recognizing that a "heavy burden against the waiver of constitutional rights... applies even in civil matters"). In *Quinn*, however, the Sixth

Circuit, and by extension the First and Fifth Circuits, would find an effective waiver even in the absence of facts establishing the employee was aware of the existence of the right to a name-clearing hearing.

The *Quinn* Court ultimately concluded that because Mr. Quinn never specifically requested a name-clearing hearing, his case was properly dismissed by the district court. App., *infra* 20a. The Sixth Circuit's conclusion is clearly erroneous because the burden should rest with the employer to offer such a hearing in the first place. Without an offer by the public employer, it cannot be presumed, consistent with the principles of law governing waiver of constitutional rights, that the employee knowingly and voluntarily waived his right to a hearing. In light of the split among the circuits, the Sixth Circuit's divergence from this Court's previous rulings, the importance of this constitutional issue, and the length of time that has passed since the Court last addressed in detail its liberty interest test, it is appropriate and necessary that the Court grant certiorari to consider this issue.

II. The Sixth Circuit's decision that Petitioner did not adequately request a name-clearing hearing sets too great a burden on terminated employees who invoke their liberty interests, and does not comport with the decisions of this Court and other circuits.

In *Quinn*, the Sixth Circuit held that although Mr. Quinn "did not have to use the exact words 'name-clearing hearing,' in order for his claim to survive, his request still would have had to 'sufficiently apprise' Defendants of his desire for a hearing to clear his name." App., *infra* 18a-19a. The Sixth Circuit concluded that Mr. Quinn's request to keep

his job pending the outcome of various investigations was not tantamount to a request for a hearing. *Id.* Without indicating what statement short of using the words "name-clearing hearing" qualified as a request, the Sixth Circuit essentially adopted the position that it cannot say what constitutes an adequate request, but it would know it if it saw it.[3] In conflict with the position taken by the Fifth and Sixth Circuits, other circuits have held that requests similar to that of Mr. Quinn *do* qualify as a sufficient request. *See Ersek v. Township of Springfield*, 102 F.3d 79, 84 (3rd Cir. 1996) (holding that although plaintiff was not necessarily required to request such a hearing, a letter from plaintiff's lawyer asking that the Township afford plaintiff an opportunity to respond to the fabricated statements was sufficient); *O'Donnell v. Barry*, 148 F.3d 1126, 1140 (D.C. Cir. 1998) ("There is no need for a plaintiff to make such a request explicitly, so long as it is reasonably clear that what the plaintiff complains of includes the lack of a hearing.").

In addition to being inconsistent with the decisions of other circuits, the rigid standard applied by the Sixth Circuit is inconsistent with this Court's mandate that a stigmatized employee must generally have the opportunity to vindicate his good name. *See Perry*, 408 U.S. at 603 ("respondent must be given an opportunity to prove the legitimacy of his claim"); *Roth*, 408 U.S. at 573 ("due process would accord an opportunity to refute the charge before University officials"); *Constantineau*, 400 U.S. at 473 ("notice and an opportunity

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[3] The Fifth Circuit also takes a hard-line approach to determining what constitutes a request for a name clearing hearing. *See Howze v. Austin*, 917 F.2d 208 (5th Cir. 1990) (the court held that an employee's question, "Do I have any recourse?" could not reasonably be construed as a request for a name clearing hearing.)

to be heard are essential"). As demonstrated by these cases, the Court has always described the hearing in general terms and has never required an explicit request in prescribed language to invoke the right to a name-clearing hearing when an employee's liberty interest is damaged.

In the *Quinn* case, it was clear that Mr. Quinn asked Mr. Shirey not to fire him until the results of the investigations were published which Mr. Quinn believed would vindicate him. To put it in the vernacular of the Court, it is clear that Mr. Quinn was asking for an opportunity to have the legitimacy of his position proven, *see Perry*, 408 U.S. at 603, or an opportunity to have the charges against him refuted, *see Roth*, 408 U.S. at 573, or at least an opportunity to have his side heard, *see Constantineau*, 400 U.S. at 473. Such a request complies with the intent and import of due process principles consistently enforced by this Court

As a result, the Sixth Circuit's decision that "[i]t is undisputed that Plaintiff failed to request a name-clearing hearing before filing the instant action," (App., *infra*. 20a) is inconsistent with prior decisions of this Court and other circuits, as well as fundamental constitutional principles of due process. Accordingly, the time is ripe for the Court to address this issue.

CONCLUSION

For the forgoing reasons, this petition for certiorari should be granted on both of the questions presented herein.

Respectfully Submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[Filed June 10, 2002]

No. 00-4250

THOMAS J. QUINN, Plaintiff-Appellant,	)
v.	)
JOHN F. SHIREY, City Manager; CITY OF CINCINNATI; ROBERT BEDINGHAUS; JOHN DOWLIN; THOMAS NEYER; DAVID KRINGS; HAMILTON COUNTY, Defendants-Appellees.	)

Appeal from the United States District Court
for the Southern District of Ohio at Cincinnati
No. 99-00555
Herman J. Weber, District Judge

JUDGES:

Before: BATCHELDER and CLAY, Circuit Judges; CARR, District Judge.*

OPINION

CLAY, Circuit Judge. Plaintiff, Thomas J. Quinn, appeals the district court's September 12, 2000 order dismissing his complaint pursuant to Fed. R. Civ. P. 12(b)(6) against the following Defendants: the City of Cincinnati and City Manager John F. Shirey; Hamilton County and the following county board members: Robert Bedinghaus, John Dowlin, and Thomas Neyer (collectively referred to as "Board" or "Board of Commissioners"); and Hamilton County Administrator David Krings. Plaintiff alleges that Defendants violated his constitutional due process rights by publicly making stigmatizing comments about him and then forcing him to resign without affording him due process in the form of a name-clearing hearing. The district court dismissed Plaintiff's complaint because of his failure to allege that he had requested a name-clearing hearing. For the reasons set out below, we **AFFIRM**.

BACKGROUND

Procedural History

On July 20, 1999, Plaintiff filed a complaint against Defendants alleging that Plaintiff's constitutionally protected liberty interest in his reputation was infringed when he was forced to resign from his position as director of the Metropolitan Sewer District ("MSD") amid publicized

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* The Honorable James G. Carr, United States District Judge for the Northern District of Ohio, sitting by designation.

comments made by Defendants who charged that Plaintiff had engaged in questionable or possibly illegal activities.[1] Plaintiff sought, *inter alia*, compensatory and punitive damages and a name-clearing hearing. On September 17, 1999, the County Defendants filed an answer. On December 10, 1999, the City Defendants filed a motion to dismiss Plaintiff's complaint. The County Defendants did not join the City Defendants' motion to dismiss or file a motion to dismiss of their own. Plaintiff filed a memorandum in opposition to the City Defendants' motion to dismiss on February 28, 2000. On September 12, 2000, the district court granted the City Defendants' motion and dismissed Plaintiff's complaint in its entirety as to all Defendants. Plaintiff filed a timely notice of appeal on October 6, 2000.

Facts

Since 1968, Hamilton County and the City of Cincinnati have jointly operated the MSD. Under an agreement entered into by those two entities, Cincinnati performs the day-to-day management of the MSD. However, the Board retains ultimate authority and control over the MSD, including managerial responsibility for adopting rules and regulations and legislation for the MSD. Although Plaintiff was "designated" a city employee, he alleges that he also had "reporting responsibilities" to the Board.

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[1] Throughout the opinion, the City of Cincinnati and Shirey, when referred to collectively, will hereinafter be referred to as the "City Defendants." When referred to collectively, the remaining Defendants will be referred to as the "County Defendants."

Plaintiff alleges that beginning in the spring of 1997 and continuing through April 1998, city and county officials publicly issued disparaging statements regarding Plaintiff and his mismanagement of the MSD. He contends that the comments "implied, suggested or conveyed the impression that [he] was an unprincipled, unscrupulous, self-serving and hence a corrupt public administrator who had bent or ignored rules and misused his public office to the professional, political and financial advantage of himself and his friends." (J.A. at 5, P 11.) The alleged comments include: (1) a Cincinnati internal auditor stating that an agreement negotiated by Plaintiff between the MSD and an independent contractor, while not illegal, served no valid purpose and should be discontinued; (2) a city council person questioning the propriety of Plaintiff serving on a board which supervised work Plaintiff's wife performed for the city; (3) the same council person calling for "the appointment of a special prosecutor to investigate what media reports characterized as 'allegations of wrongdoing' and 'alleged improprieties;'" (4) Defendant Bedinghaus commenting that he was not confident the Board had received the "complete story" regarding the issue of whether the waiver of sewer tap-in fees had been proper and calling Plaintiff's response to inquiries "troublesome;" (5) statements by the Board and city officials that they were going to order an audit of the MSD or that such an audit was appropriate for the period of Plaintiff's tenure; (6) the Board's announcement that it had hired a former FBI agent and white collar crime specialist to investigate allegations of illegal conduct by Plaintiff and the MSD; (7) Defendant Bedinghaus commenting that Plaintiff "had trampled over the intentions of the Board," and that "the embarrassments" created by Plaintiff were of a "career ending" nature; (8) statements by the media that a grand jury

had been investigating "charges of wrongdoing" by the MSD and Plaintiff and that the "probe" had "deepened from charges of bad management to potential criminality;" and (9) other statements by city officials calling for Plaintiff's termination and/or suggesting that he should be terminated. (J.A. at 9-11, P 12.)

Plaintiff alleges that on April 28, 1998, he communicated with Defendant Shirey that he was innocent of all allegations and "requested that the City defer any action on the resolution to fire [him] pending conclusion of these audit and grand jury investigations." Despite his request, Shirey allegedly told Plaintiff that he would fire him unless Plaintiff submitted his resignation the following morning. Plaintiff alleges that he submitted his resignation because of Shirey's ultimatum and the criminal and civil investigations launched by Defendants. Plaintiff alleges that for the good of the city and the county, he felt constrained to tender his resignation, which he did on April 29, 1998.

DISCUSSION

I.

This Court reviews *de novo* a district court's dismissal of a complaint under Rule 12(b)(6). *Hammons v. Norfolk S. Corp.*, 156 F.3d 701, 704 (6th Cir. 1998) (citing *Merriweather v. City of Memphis*, 107 F.3d 396, 398 (6th Cir. 1997)). The Court must "construe the complaint in the light most favorable to the plaintiff and determine whether the plaintiff undoubtedly can prove no set of facts in support of the claims that would entitle him to relief." *Blakely v. United States*, 276 F.3d 853, 863 (6th Cir. 2002) (quoting *Gregory v. Shelby County, Tenn.*, 220 F.3d 433, 446 (6th Cir. 2000)).

Further, the allegations must be construed in the light most favorable to the plaintiff. *Mertik v. Blalock*, 983 F.2d 1353, 1355 (6th Cir. 1993).

II.

Plaintiff contends that the district court erred in dismissing his complaint for several reasons. He argues that neither the Supreme Court nor other circuits follow this circuit's rule of requiring a plaintiff to request a name-clearing hearing as a prerequisite to bringing a suit alleging deprivation of a liberty interest under the due process clause. He argues that such a rule shifts the burden of implementing constitutional safeguards from the public employer to the employee. He contends that it is unfair to force a plaintiff to request a name-clearing hearing as a prerequisite to bringing a due process liberty interest suit, when the plaintiff may not have known he had a right to request such a hearing in the first place and the employer did not perform its "affirmative duty" of apprizing the plaintiff of the right to a hearing.

The City Defendants counter that this circuit's precedent is clear in that a plaintiff must request a name-clearing hearing in order to bring the type of constitutional challenge Plaintiff alleges. The City Defendants also argue that Plaintiff's contention that Defendants had an "affirmative duty" to apprize him of his constitutional right to a name-clearing hearing is raised for the first time on appeal, conflicts with this circuit's precedent, and is irrelevant as Plaintiff does not claim that he did not know he had such a right because Defendants failed to tell him.

Both the City and County Defendants raise other arguments to support dismissal of Plaintiff's complaint. For instance, Defendants contend that the statements alleged in Plaintiff's complaint are insufficient as a matter of law to support a deprivation of liberty interest claim, and the County Defendants, specifically, assert that because Plaintiff was not a County employee, the county owed him no right to a name-clearing hearing.

As we explain below, Plaintiff failed to request a name-clearing hearing, which was fatal to his claim, and therefore the district court properly dismissed his complaint.

III.

The Fourteenth Amendment forbids state actors from depriving individuals of life, liberty or property without due process of law. *See Mertik*, 983 F.2d at 1359; *see also Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972); *Joelson v. United States*, 86 F.3d 1413, 1420 (6th Cir. 1996) ("To sustain a procedural due process claim, a plaintiff must first demonstrate the existence of a protected liberty or property interest."). Except in exceptional circumstances, not applicable here, before a person is deprived of either a liberty or property interest, he has a right to some kind of hearing. *Roth*, 408 U.S. at 570 n.7. "[A] person's reputation, good name, honor, and integrity are among the liberty interests protected by the due process clause of the fourteenth amendment." *Chilingirian v. Boris*, 882 F.2d 200, 205 (6th Cir. 1989). However, defamation alone is not enough to invoke due process concerns. *Paul v. Davis*, 424 U.S. 693, 711, 47 L. Ed. 2d 405, 96 S. Ct. 1155 (1976). Some

alteration of a right or status "previously recognized by state law," such as employment, must accompany the damage to reputation. *Id.* at 711-12; *see also Ferencz v. Hairston*, 119 F.3d 1244, 1249 (6th Cir. 1997) (holding that as publication of defamatory comments complained of was not accompanied by the deprivation of any tangible interest such as continued employment, the publication did not deprive plaintiffs of a liberty interest); *Mertik*, 983 F.2d at 1361 (explaining that when a plaintiff alleges "loss, infringement or denial of a government benefit previously enjoyed . . . coupled with communications by government officials, having a stigmatizing effect, a claim for deprivation of liberty without due process of law will lie"). Consequently, when a "nontenured employee shows that he has been stigmatized by the voluntary, public dissemination of false information in the course of a decision to terminate his employment, the employer is required to afford him an opportunity to clear his name." *Chilingirian*, 882 F.2d at 205; *see also Roth*, 408 U.S. at 573 (explaining that "where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential"); *Christian v. Belcher*, 888 F.2d 410, 417 (6th Cir. 1989) (explaining that due process concerns are implicated where public employer voluntarily disseminates false information in the course of a decision to terminate an employee). A name-clearing hearing is required only if the employer creates a false and defamatory impression about a particular employee in connection with his termination. *Id.*

This Court has identified five factors that a plaintiff must show in order to establish that he was deprived of a liberty interest and entitled to a name-clearing hearing.

> First, the stigmatizing statements must be made in conjunction with the plaintiff's termination from employment. . . . Second, a plaintiff is not deprived of his liberty interest when the employer has alleged merely improper or inadequate performance, incompetence, neglect of duty or malfeasance. . . . Third, the stigmatizing statements or charges must be made public. Fourth, the plaintiff must claim that the charges made against him were false. Lastly, the public dissemination must have been voluntary.

Brown v. City of Niota, 214 F.3d 718, 722-23 (6th Cir. 2000) (citing *Ludwig v. Bd. of Trustees*, 123 F.3d 404, 410 (6th Cir. 1997)).

"Once a plaintiff has established the existence of all five elements, he is entitled to a name-clearing hearing if he requests one." *Brown*, 214 F.3d at 723 (citing *Ludwig*, 123 F.3d at 410). It is the denial of the name-clearing hearing that causes the deprivation of the liberty interest without due process. *Brown*, 214 F.3d at 723. Thus, the public employer deprives an employee of his liberty interest without due process, if upon request for a name-clearing hearing, the employee is denied. *Id.*; *see also Baden v. Koch*, 799 F.2d 825, 830 (2d Cir. 1986) ("In order to succeed on his liberty interest claim, [plaintiff] must also prove that [defendant] improperly refused to grant him a post-removal opportunity to refute the false charges that led to his removal;" as widely publicized derogatory comments alone amount to no more than a defamation claim, which is not cognizable under the Constitution); *In re Selcraig*, 705 F.2d 789, 796 (5th Cir.

1983) ("A constitutional deprivation of liberty occurs when there is some injury to employment . . . in addition to damage to reputation *and a subsequent denial of procedural due process* [via a name-clearing hearing or the like] *to redress that injury.*") (emphasis added). As the Fifth Circuit pointed out in *Selcraig*, the "fourteenth amendment provides only procedural protection against injury inflicted by state officers to the interest state employees have in their reputation." *Id.* Indeed, "the right to recover arises from the denial of a hearing to refute the charges . . . [thus], the extent of the publication would be relevant only to the amount of damages suffered." *Id.* at 797 n.10.

The purpose of a name-clearing hearing is to afford the aggrieved employee an "opportunity to be heard to refute the charges disseminated against him." *Ludwig*, 123 F.3d at 410. The hearing "need only provide an opportunity to clear one's name and need not comply with formal procedures to be valid." *Id.*

A. This Court requires plaintiffs to request a name-clearing hearing prior to bringing suit

Plaintiff argues that the law in this circuit is confusing and inconsistent with regard to a plaintiff's duty to request a name-clearing hearing when he attempts to bring a due process claim in connection with his liberty interest. He contends that *Ludwig*, *Brown* and an unpublished decision by this Court, *McManamon v. Charter Township of Redford,* 2000 U.S. App. LEXIS 33873, No. 99-2144, 2000 WL 1888616 (6th Cir. Dec. 19, 2000), yield inconsistent results. We disagree. First, this panel is not bound by *McManamon* inasmuch as that case is unpublished. *See United States v.*

Barnes, 278 F.3d 644, 648 n.1 (6th Cir. 2002). However, that case, *Ludwig* and *Brown* all consistently held that because of the failure of the plaintiffs in those cases to request a name-clearing hearing, their claims were barred.

In *Ludwig*, 123 F.3d 404, the plaintiff, a university basketball coach, brought a liberty interest claim after he was fired for repeatedly making offensive remarks to a foreign student on his team regarding his nationality and for other aspects of his performance as a coach. *Id.* at 406-07. The plaintiff was ultimately terminated. *Id.* at 407. Following that decision, the university's marketing department issued statements to the news media discussing the circumstances surrounding the plaintiff's termination. *Id.* Some of the articles quoted university officials and contained allegations that the plaintiff had tried to persuade students on scholarship to transfer so that their scholarships could be used by other students. *Id.* The articles also discussed the plaintiff's alleged use of ethnic slurs. *Id.* The plaintiff filed suit alleging that the defendants had deprived him of both (1) a property interest, because he had been suspended without pay before he was terminated, and (2) his liberty interest, because the public statements issued regarding his termination were false. *Id.* The district court dismissed the Plaintiff's complaint.

Affirming the dismissal on grounds different than those relied on by the district court, this Court held that the plaintiff's failure to request a name-clearing hearing was fatal to his liberty interest claim. *Id.* at 411. The Court specifically held that a plaintiff is entitled to notice and opportunity to be heard in a name-clearing hearing when he requests a hearing. *Id.* at 410. In noting that a name-clearing hearing is required only if the plaintiff requests one, this Court cited two opinions

from the Fifth Circuit. *Id.* at 410 (citing *Gillum v. City of Kerrville,* 3 F.3d 117, 121 (5th Cir. 1993); *Rosenstein v. City of Dallas*, 876 F.2d 392, 395 (5th Cir. 1989), *rehearing granted and opinion reinstated in relevant part by*, 901 F.2d 61 (5th Cir. 1990)). The Court in *Ludwig* also noted that in "prior cases," the Fifth Circuit had "imposed a requirement upon the public employer that it make known to the employee that he may have an opportunity to clear his name upon request." *Ludwig*, 123 F.3d at 410 n.10 (noting that the Eleventh Circuit also imposes such a requirement) (citations and internal quotation marks omitted). However, this Court noted that "in the instant case, Ludwig does not claim he was unaware he may be entitled to a name-clearing hearing because of the University's failure to give him notice of such a right." *Id.*

This Court again addressed the duty of an employee to request a name-clearing hearing in a suit alleging deprivation of a liberty interest in *Brown*, 214 F.3d 718. In that case, the plaintiffs Gerald Brown and Nick D. Anderson were fired from their positions as a full-time police officer and a part-time reserve officer, respectively, after Brown pushed a city resident during the course of an investigation. *Id.* at 719-20. Anderson was officially terminated because he worked both for the fire and police departments, which the Niota board of commissioners, who made the employment decisions, determined to be a conflict of interest. *Id.* at 720. On February 12, 1998, the plaintiffs mailed a letter to Niota's mayor, requesting that she grant them a name-clearing hearing by February 16, 1998 and stating that if she did not respond by that date, they would take further action. *Id.* However, the plaintiffs filed suit before the mayor received their letter.

The plaintiffs in *Brown* asserted that they were denied both their property and liberty interests without due process of law by the termination proceedings conducted by the board of commissioners. *Id.* This Court rejected the plaintiffs' property interest claims by determining that they were at-will employees with no such interest in their employment. *Id.* at 721-22. The Court also rejected their liberty interest claims because although the plaintiffs clearly had requested a name-clearing hearing, the request had not been denied before they filed suit. *Id.* at 723. The Court held that before the plaintiffs could show they had been deprived of their liberty interests without due process, they would have to show they requested and had been denied a hearing. This they had not done, according to the Court. "At the time this complaint was filed, the plaintiffs had not suffered a deprivation of their liberty interest without due process of law because they had not been denied a name-clearing hearing by the city." *Id.*

These cases clearly explain that before asserting his liberty interest claim, Plaintiff was required to show that he requested a name-clearing hearing and was denied that hearing. *Brown*, 214 F.3d at 723; *Ludwig*, 123 F.3d at 410-11. While Plaintiff argues that a different standard may exist in some other circuits and that the Supreme Court has not addressed the issue, this Court has spoken on the issue and does require that an employee request a name-clearing hearing.[2]

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[2] Plaintiff claims that other circuits have determined that a plaintiff's failure specifically to request a name-clearing hearing is not fatal to a deprivation of a liberty interest claim. *See e.g., O'Donnell v. Barry*, 331 U.S. App. D.C. 272, 148 F.3d 1126, 1140 n.4 (D.C. Cir. 1998) (holding that a plaintiff's due process

Plaintiff is correct that our cases prior to *Ludwig* did not clearly impose a requirement on an employee to request a name-clearing hearing as a prerequisite to filing an action. *See e.g., Christian*, 888 F.2d at 416-17 (holding that plaintiff's liberty interest claim failed inasmuch as he failed to allege public disclosure of the stigmatizing comments made by defendants, with no discussion pertaining to plaintiff's need to request a name-clearing hearing). However, since *Ludwig*, which was decided well before Plaintiff filed his complaint, this Court has consistently held that a plaintiff's failure to request a name-clearing hearing is fatal to a claim alleging a deprivation of a liberty interest without due process. *See Brown*, 214 F.3d at 723; *see also Shealy v. Caldwell*, 2001 U.S. App. LEXIS 17181, No. 99-3330, 2001 WL 873626, at * 7 (6th Cir. July 27, 2001) (holding that plaintiff's failure to request a name-clearing hearing was fatal to her claim); *McManamon*, 2000 U.S. App. LEXIS 33873, 2000 WL 1888616, at *6 (holding that plaintiff failed to request a name clearing hearing and thus suffered no deprivation of her

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claims are not foreclosed because he fails "explicitly" to request a name-clearing hearing, "so long as it is reasonably clear that what the plaintiff complains of includes the lack of a hearing"); *Ersek v. Township of Springfield*, 102 F.3d 79, 84 n.8 (3d Cir. 1996) (refusing to reach the issue of whether a plaintiff must request a name-clearing hearing; and in any event, assuming that the letter plaintiff sent to the township before instituting his suit which claimed that he had not been afforded a chance to respond to false statements made about him sufficed as such a request). As we explain later, Plaintiff not only failed to request a name-clearing hearing, but failed adequately to apprize Defendants in any way that he sought an opportunity to respond to the charges brought against him.

liberty interest, pursuant to *Ludwig*).

Plaintiff further contends that it is unfair to require plaintiffs to request a name-clearing hearing without first ensuring that the employer performed its "affirmative duty" of apprizing the employee that a right to a hearing exists. He essentially contends that by forcing a plaintiff to request a name-clearing hearing before bringing suit, when the employee may not have known of his right to such a hearing effectively constitutes a waiver of Plaintiff's rights. *See e.g., D. H. Overmyer Co. Inc., of Ohio v. Frick Co.*, 405 U.S. 174, 188, 31 L. Ed. 2d 124, 92 S. Ct. 775, 61 Ohio Op. 2d 528 (1972) (Douglas, J. concurring) (noting that a "heavy burden against the waiver of constitutional rights . . . applies even in civil matters"). He argues that the procedural due process right at issue in this case is no less worthy of protection against unknowing waivers than other constitutional rights. *But see Mertik*, 983 F.2d at 1362 (noting that the Supreme Court has narrowly construed the nature and scope of protected liberty interests) (citing *Siegert v. Gilley*, 500 U.S. 226, 114 L. Ed. 2d 277, 111 S. Ct. 1789 (1991)). In any event, this Court has never imposed an affirmative duty on an employer to apprize the employee of his right to a name-clearing hearing.

Despite Plaintiff's arguments to the contrary, we believe this case is indistinguishable from *Ludwig*. In that case, the Court noted that *Ludwig* had not claimed that "he was unaware he may be entitled to a name-clearing hearing because of the University's failure to give him notice of such a right." 123 F.3d at 410 n.10. In the instant case, Plaintiff does not claim in his reply brief that he was unaware of his right to a name-clearing hearing. He asserts instead that "in

the absence of any evidence that the defendants fulfilled their obligation to provide notice of the right to a hearing or that [he] was aware of such right, such facts cannot be presumed in the context of a Rule 12(b)(6) motion." Plaintiff's Reply Br. at 3. However, *Ludwig* also was decided on a Rule 12(b)(6) motion to dismiss. Just as the plaintiff in that case did not claim he was unaware of his right to a name-clearing hearing, neither does Plaintiff in this case make such a claim. Despite the fact that to the extent we addressed the issue of the plaintiff's knowledge of his right to a name-clearing hearing in *Ludwig* at all, we expressly noted that the plaintiff in that case did not claim that he lacked such knowledge; Plaintiff in the instant case failed to allege that he did not know of his right to a name-clearing hearing. Moreover, even had Plaintiff so alleged, it is doubtful that Plaintiff's claim would have survived the City Defendants' motion to dismiss. As stated above, a plaintiff must request and be denied a name-clearing hearing in order to have been deprived of a liberty interest without due process. *Brown*, 214 F.3d at 723. Therefore, a plaintiff who fails to allege that he has requested a hearing and was denied the same has no cause of action, whether or not he had been informed of a right to a hearing before filing suit. *Id.*

B. Plaintiff's alleged request for a name-clearing hearing was inadequate

Plaintiff alleges in his complaint that he informed Defendant Shirey that he was innocent of all the charges against him and requested that any resolution to fire him wait until the audits and grand jury investigations concluded. He further alleges that his "request was based on the fact that

pending the outcome of these public inquiries and hearings, it would be impossible for [him] to meaningfully clear his name of the stigma that had been imposed on him by reason of Defendants' statements and reports."[3] (J.A. at 12.) Plaintiff argues that his statements to Shirey should suffice as a request for a name-clearing hearing. We disagree.

To support his argument, Plaintiff essentially relies on *Ludwig*, 123 F.3d 404. In that case, this Court noted that a letter attached to the plaintiff's complaint indicated that he had informed the defendants that the investigation into the charges levied against him had deprived him of due process. *Id.* at 411. Further, his complaint contained similar allegations regarding defendant's actions and the investigation and a lack of due process. *Id.* The Court held that these references to lack of due process were insufficient to show the plaintiff had requested a name-clearing hearing. *Id.* The Court noted that it would have been impossible for the defendants to tell whether the plaintiff was complaining about a lack of due

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[3] Defendants point out that this allegation defeats any claim that Plaintiff did not know he had a right to a name-clearing hearing inasmuch as he claims his request not to be fired until after the investigations were concluded was based on his belief that he could not clear his name otherwise. Plaintiff counters that to adopt such an interpretation would in effect construe the allegations in his complaint against him, which this Court cannot do on a 12(b)(6) motion. *See Mertik*, 983 F.2d at 1355. We agree with Plaintiff that construing the allegations in the complaint in his favor, there is an arguable distinction between his recognition that until the investigations into his activities were concluded, he could not clear his name of wrongdoing, and his being aware that he had a right to a name-clearing hearing, *per se*.

process with regard to his property interest claim or his liberty interest rights. *Id.* In so noting, the Court pointed out that in the Fifth Circuit's *Rosenstein* case, the plaintiff's request to "appeal" the decision to terminate him through his employer's established procedures for something he "did not do" sufficed as a request for a name-clearing hearing, where the only issue was the truth or falsity of the charge that stigmatized him. *Id.* Because the plaintiff in *Rosenstein* only asserted a liberty interest claim, his request for an appeal and denial of the charges against him sufficed as a request for a name-clearing hearing. *See McManamon*, 2000 U.S. App. LEXIS 33873, 2000 WL 1888616, at *6 n.9 ("The court distinguished *Rosenstein* in *Ludwig* when it required plaintiff to ask specifically for a name-clearing hearing where the plaintiff raised both liberty and property deprivation claims.").

In the instant case, Plaintiff only asserts a liberty interest claim. Thus, he contends that unlike the plaintiff in *Ludwig*, he was not required to utter the specific words "name-clearing hearing." Just as the plaintiff in *Rosenstein* did, Plaintiff in the instant case claimed that he was innocent of the charges against him. However, unlike the plaintiff in *Rosenstein*, Plaintiff did not ask for a review through an established appeals process of the decision to terminate him. Indeed, the Fifth Circuit has noted that by requesting an appeal through such an established procedure, the plaintiff in *Rosenstein* "asked for a public review of the decision to fire him." *Howze v. City of Austin*, 917 F.2d 208, 208-09 (5th Cir. 1990).

Even were we to agree with Plaintiff that because he only attempts to bring a liberty interest claim, he did not have

to use the exact words "name-clearing hearing," in order for his claim to survive, his request still would have had to "sufficiently apprise" Defendants of his desire for a hearing to clear his name "following the dissemination of the statements." *Ludwig*, 123 F.3d at 411. Plaintiff fails to allege that he informed Shirey that he requested not to be fired so that he could clear his name. Even accepting the allegations in Plaintiff's complaint as true and construing them in his favor, we do not see how Defendants could be required to interpret Plaintiff's request to keep his job until pending investigations concluded as being tantamount to a request for a name-clearing hearing. Thus, the district court properly dismissed Plaintiff's complaint.[4]

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[4] As stated, the City Defendants filed a motion to dismiss in this case, which the County failed to join. However, under the facts of this case, Plaintiff's complaint was properly dismissed as to all Defendants. *See I-Star Communications Corp. v. City of East Cleveland*, 885 F. Supp. 1035, 1042-43 (N.D. Ohio 1995) (holding that although city defendants failed to move to dismiss plaintiff's complaint, because the individual council member defendants had so moved, court would grant dismissal as to all defendants inasmuch as complaint failed to state a claim for relief and plaintiff had opportunity to fully address arguments that applied equally to both defendants); *Washington Petroleum & Supply Co. v. Girard Bank*, 629 F. Supp. 1224, (M.D. Pa. 1983) (holding that dismissal was proper as to two different defendant banks, although only one of them filed motion to dismiss, where both defendants were similarly situated and plaintiff was afforded full and fair opportunity to respond to arguments concerning a basis for the dismissal that applied to both defendants).

C. Alternative arguments

Finally, in support of their motion to dismiss, the City Defendants raise numerous alternative arguments which were asserted below but not reached by the district court. The County Defendants also raise numerous arguments on appeal to support dismissal of Plaintiff's complaint. However, the County Defendants asserted none of these arguments below, and as stated earlier, failed to join the City Defendants' motion to dismiss. Plaintiff urges the Court not to reach these arguments inasmuch as the district court did not rely upon them in disposing of this case. This Court "typically refrains from considering issues not passed upon by the lower courts," especially where the issues involve unresolved factual disputes and where our refusal to reach these issues would not result in injustice to the parties. *Pfennig v. Household Credit Services, Inc.*, 286 F.3d 340, 349-50 (6th Cir. 2002) (citing *Blue Cross & Blue Shield Mut. of Ohio v. Blue Cross and Blue Shield Ass'n*, 110 F.3d 318, 335 (6th Cir. 1997)). In light of our holding that the district court properly dismissed Plaintiff's complaint in its entirety because he failed to request a name-clearing hearing, we need not reach the other issues raised by Defendants.

CONCLUSION

In order for a plaintiff to show that he has been deprived of a liberty interest in his reputation without due process, the plaintiff first must request a name-clearing hearing. It is undisputed that Plaintiff failed to request a name-clearing hearing before filing the instant action, and the district court properly dismissed his complaint. We therefore **AFFIRM**.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

[Filed September 12, 2000]

No. C-1-99-555

THOMAS J. QUINN,
Plaintiff,

v.

JOHN F. SHIREY, et al.,
Defendants.

ORDER

This matter is before the Court upon Defendants' Motion to Dismiss (doe. 5). Plaintiff filed his Memorandum in Opposition (doe. 7) and Defendants filed a Reply Brief (doc. 10). Defendants also filed Supplemental Authority (doe. 11).

Defendants move pursuant to Federal Rule of Civil Procedure 12(b)(6) for the dismissal of the complaint for failure to state a claim upon which relief can be granted. In determining a motion to dismiss for failure to state a claim, the allegations in the complaint must be taken as true and

construed in the light most favorable to the nonmoving party. *Westlake v. Lucas,* 537 F.2d 857, 858 (6th Cir. 1976). "A motion to dismiss should not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Isaac v. Conrad,* 39 F.Supp.2d 1025, 1027 (S.D.Ohio 1999)(citing, *Conley v. Gibson,* 355 U.S. 41, 44-45 (1957); *see Scheuer v. Rhodes,* 416 U.S. 232, 236 (1974). Plaintiff Quinn brings this action "pursuant to 42 U.S.C. § 1983 which provides a remedy for violations of constitutional rights committed under color of state law." Doc, 1. Plaintiff Quinn alleges that various elected and appointed City and County officials issued statements that conveyed the impression that Plaintiff was a "corrupt public administrator." Doc. 1. Plaintiff alleges that on April 28, 1998 Plaintiff Quinn communicated to Defendant Shirey that Plain, tiff Quinn was innocent of any allegations and "requested that the City defer any action..." On April 29, 1998 Plaintiff submitted written notice of his resignation.

The united States Court of Appeals for the Sixth Circuit in *Ludwig v. Bd. of Trustees of Ferris State University,* 123 F.3d 404, 409 (1997), instructed that "[a]n injury to a person's reputation, good name, honor or integrity constitutes the deprivation of a liberty interest when the injury occurs in connection with an employee's termination." (citing, *Board of Regents v. Roth,* 408 U.S. 564, 573 (1972). A liberty interest is implicated when: stigmatizing statements are made in conjunction with the termination; the statements might seriously damage the employees standing or foreclose his other employment opportunities; the statements are made public; the employee claims the statements are false; and the public dissemination has been voluntary. *Ludwig,* 123 F.3d at 410.

The Court stated that "[i]f the above requirements are met, the employee is entitled to notice and opportunity to be heard through a name-clearing hearing, when plaintiff has made a request for such a hearing." *Id.* (citations omitted).

Defendants argue that Plaintiff never requested a name-clearing hearing. In his Complaint, Plaintiff merely alleges that "Plaintiff communicated to Defendant Shirey on April 28, 1998 that he was innocent of any of these allegations and requested that the City defer any action on the resolution to fire Plaintiff pending conclusion of these audits and grand jury investigations." Doc. 1. Defendants argue that Plaintiff's failure to request a name-clearing heating requires dismissal of his § 1983 claim.

In *Ludwig,* it was determined that "the plaintiff's claim for deprivation of a liberty interest was properly dismissed" in that the plaintiffs "letter accusing the defendants of denying plaintiff due process of law... was insufficient to constitute a request for a name-clearing hearing," *Ludwig,* 123 F.3d at 411. *In Brown v. City of Niota,* 2000 WL 690226 (6th Cir. 2000), the plaintiffs alleged a § 1983 claim of deprivation of a liberty interest and the defendants moved for summary judgment. The Court found that:

> [b]ecause the city did not receive notice of the plaintiffs' desire for a name-clearing hearing prior to the initiation of this law suit we believe that the district court was correct in granting summary judgment in favor of the defendants. At the time this complaint was filed, the plaintiffs had not suffered a deprivation of their liberty interest without due

process of law because they had not been denied a name-clearing hearing by the city.

Brown v. City of Niota, 2000 WL 690226 (6th Cir. 2000).

As in the *Brown* and *Ludwig* cases, Plaintiff Quinn has not requested a name-clearing hearing and has not alleged that he requested a name-clearing hearing, therefore Plaintiff's claim for deprivation of a liberty interest is properly dismissed. At the time this complaint was filed, Plaintiff had not suffered a deprivation of his liberty interest without due process of law because he had not been denied a name-clearing heating.

For the foregoing reasons, the Defendants' Motion to Dismiss (doc. 5) is **GRANTED** and this case is **DISMISSED** and **TERMINATED** on the docket of this Court.

IT IS SO ORDERED.

/s/_____
Herman J. Weber
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

[Filed September 12, 2000]
No. C-1-99-555

THOMAS J. QUINN,)
Plaintiff(s),)
)
v.)
)
JOHN F. SHIREY, et al.,)
Defendant(s).)

JUDGMENT IN A CIVIL CASE

Decision by Court: This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that defendants' motion to dismiss (doc. 5) is GRANTED and this case is DISMISSED and TERMINATED on the docket of this Court.

September 12, 2000

Kenneth Murphy, Clerk
/s/ _____
Deputy Clerk

(2)
Supreme Court, U.S.
FILED
OCT 10 2002
CLERK

No. 02-389

In the Supreme Court of the United States

THOMAS J. QUINN,

Petitioner,

v.

JOHN SHIREY, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION FOR COUNTY RESPONDENTS

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13 pp

QUESTIONS PRESENTED

The Petitioner has presented the following questions as the basis for the requested review by this Court.

1. Where a public employer deprives an employee of his liberty interest under the Fourteenth Amendment by making stigmatizing and false public statements about the employee in connection with the termination of his employment, is the employer required under fundamental constitutional principles of due process to notify the employee that he is entitled to a name-clearing hearing?

2. Where an employee has been terminated from his public employment under circumstances in which his professional reputation has been stigmatized, must the employee's complaint brought pursuant to 42 U.S.C. § 1983 contain affirmative allegations that the employee specifically requested and was denied a name-clearing hearing by the employer in order to survive a motion to dismiss under Federal Civil Rule 12(b)?

CORPORATE DISCLOSURE

Disclosure of Corporate Affiliations and Financial Interests of Respondents, Bedinghaus, Neyer, Dowlin, Krings and Hamilton County

The Respondent, Hamilton County, Ohio is a political subdivision of the State of Ohio. The individual Respondents, David Krings, County Administrator and Robert Bedinghaus, Thomas Neyer and John Dowlin are County Commissioners of Hamilton County, Ohio and are governmental officials under appropriate sections of the Ohio Revised Code. To the extent that such individuals are sued in their personal, non-governmental capacities, the individuals Respondents state that they are not subsidiaries or affiliates of publically owned corporations and there is no publically owned corporation, not a party to the appellate process, that has a financial interest in the outcome.

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STATEMENT OF THE CASE

The Petitioner, Thomas Quinn ("Petitioner") filed his action against Respondents the City of Cincinnati, John F. Shirey, City Manager (collectively "City Respondents") and Robert Bedinghaus, John Dowlin, Thomas Neyer, David Krings, Hamilton County, Ohio ("County Respondents"). The Petitioner alleged that all of the Respondents had deprived him of the liberty interest in his reputation without due process by terminating his employment under stigmatizing circumstances without providing a name-clearing hearing. The City Respondents moved to dismiss the Complaint on several different grounds in the District Court. The County Defendants had not joined in the Motion to Dismiss filed by the City Respondents. The District Court, Southern District of Ohio, dismissed the Petitioner's Complaint including all claims against the County Respondents. On appeal to the United States Court of Appeals for the Sixth Circuit, the Petitioner raised, for the first time, the claim that the City Respondents had breached an "affirmative duty" imposed by the Constitution to inform Petitioner of an assumed right to a name clearing hearing. The Court of Appeals for the Sixth Circuit affirmed the District Court's dismissal of the Complaint. The Sixth Circuit found that the Petitioner had not claimed that he was unaware of his right to a name-clearing hearing. (Pet.App.16a) The Sixth Circuit also ruled that the Petitioner had failed to request a name-clearing hearing. Because of the firm basis of its decision, the Sixth Circuit declined to address the alternative grounds for the dismissal presented by the City Respondents or County Respondents in their argument to the Court. (Id. at 20a)

STATEMENT OF THE FACTS

The Petitioner, Thomas Quinn, was employed by the City of Cincinnati as the Director of the Metropolitan Sewer District of Greater Cincinnati ("MSD") from 1992 until 1998. MSD is a joint operation of the City of Cincinnati and Hamilton County, Ohio. The City of Cincinnati performs the day to day management of MSD. The Board of County Commissioners retained some authority and control over MSD, including the responsibilities for adopting rules and regulations for MSD. Petitioner's job performance was under scrutiny from the Spring of 1997 until the Spring of 1998 as City and County officials made various statements concerning the Petitioner and his performance of his job duties. Such statements included accurate accounts that investigations and audits of the MSD and Petitioner's management of the MSD were occurring. Some of the "factual" statements which Petitioner has attributed to the Respondents involving Grand Jury investigations and a report concerning sewer tap-in waivers are actually attributed to newspaper reports and not to any public officials.

The Complaint that the Petitioner had filed in the District Court in this action did not allege that the audits, investigations and inquiries had not occurred nor that any public official publically stated that Petitioner was corrupt or dishonest. The Complaint did not allege that Petitioner was unaware of his "right" to a name clearing hearing or that the City respondents had failed to inform him of this assumed right. The County did not handle MSD personnel matters. As a city employee, the County respondents had no duty to the Petitioner to conduct any name clearing hearing.

On April 28, 1998 the City Manager informed the Petitioner that he would be discharged if he did not resign the

next morning. The Petitioner did in fact resign the next day without requesting any name clearing hearing.

REASONS FOR DENYING THE WRIT

I. PETITIONER HAS NOT ADVANCED A COMPELLING ARGUMENT TO JUSTIFY DISCRETIONARY REVIEW BY THIS COURT OF HIS FIRST QUESTION.

A. The Sixth Circuit Does Not Rely Upon the "Affirmative Duty" Advanced By Petitioner's Argument.

In the present action the Sixth Circuit ruled that the Petitioner had failed to allege that he was unaware of his assumed right to a named-clearing hearing. Petitioner has argued that an employer should be required under constitutional principles of due process to notify an employee that he is entitled to a name-clearing hearing in connection with a termination proceeding. The Petitioner seeks to impose an affirmative constitutional duty to advise employees of their right to ask for a name-clearing hearing.

The Sixth Circuit did not decide the action based upon the "affirmative duty" theory which the Petitioner suggested is required by the Constitution. The Court simply stated the Petitioner had failed to request a name clearing hearing, which was fatal to his claim and therefore found that the District Court properly dismissed his complaint.

The Sixth Circuit, in its decision, stated that it has never imposed an affirmative duty on an employer to apprize the employee of his right to a name clearing hearing. The Court properly followed its previous decision of *Ludwig v.*

Board of Trustees, 123 F.3d 404 (6th Cir. 1997) in which the Sixth Circuit decided that Plaintiff must request and be denied a name clearing hearing in order to have been deprived of his liberty interest without due process. See also, *Brown v. City of Niota*, 214 F.3d 718 (6th Cir. 2000). The Plaintiff who fails to allege that he has requested a name clearing hearing and was denied the same has no cause of action, whether or not he had been informed of right to a hearing before filing suit.

The Sixth Circuit did not need to decide whether an "affirmative duty" existed because the allegations set forth in the Petitioner's Complaint were insufficient to state a cause of action based upon the previous decisions of the Sixth Circuit.

B. Review Is Not Warranted Because There is No Conflict With Other Circuits.

Petitioner has argued that decisions from other circuits establish a conflict among the circuits which would warrant review by this Court. The case of *Richardson v. Orangeburg School District No. 1*, 1, 94-2092, 1995 W.L. 255941 (4th Cir. May 3, 1995) involved a qualified immunity appeal by school board members where the 4th Circuit found that the defendants school board members had not afforded *Richardson* adequate due process at a school board meeting. This case does not hold that a public employer has an "affirmative duty" as asserted by the Petitioner. Likewise, *Lyons v. Barett*, 851 F.2d 406 (D.C. Cir. 1988) held that a discharged non-tenured employee had a right to a name clearing hearing. The Court did not hold that an "affirmative duty" exists to advise the employee. Further the case of *Buxton v. Plant City*, 871 F.2d 1037 (11th Cir. 1989) did not establish the broad "affirmative duty" asserted by the petition

and the Petitioner has no other decisions from the 11th Circuit that follow *Buxton*, *supra* or that support the "affirmative duty".

The Petitioner has cited several cases that he claims have rejected the "affirmative duty" argument that he is advancing before this court. Petitioner claims that the Court in *Wojcik v. Massachusetts State Lottery Commission*, 300 F.3d 92 (1st Cir. 2002) rejected the "affirmative duty" argument. The 1st Circuit simply stated that the "government must have failed to comply with employees request for adequate name-clearing opportunity." This decision says nothing about whether an "affirmative duty" to notify the employee of the right to request a name clearing hearing exists. *Id.* at 103. Likewise, the 5th Circuit decisions in *Gillum v. City of Kerrville*, F.3d 117 (5th Cir. 1993) and *Rosenstein v. City of Dallas*, 876 F.2d 392, (5th Cir. 1989) have no holding regarding the asserted "affirmative duty". The Sixth Circuit, in its decision, follows *Ludwig, supra* and specifically found that the *Rosenstein* had been distinguished in the *Ludwig* decision. (Pet. App. at 18a).

There is no real conflict among the federal circuits concerning the claimed "affirmative duty" as outlined by the Petitioner in his petition.

II. THE SECOND QUESTION PRESENTED IS FACT SPECIFIC AND DOES NOT WARRANT REVIEW BY THIS COURT.

Petitioner asks that this Court review the Sixth Circuits decision on facts specific to the Complaint filed by the Petitioner with the District Court. The Sixth Circuit ruled:

> "Even accepting the allegation in Plaintiff's complaint as true and construing them in his favor, we do not see how Defendants could be required to interpret Plaintiff's request to keep his job until pending investigations concluded as being tantamount to a request for a name clearing hearing."

(Pet. App. 18a-19a)

The Sixth Circuit based its decision on the particular allegations of the Complaint filed by the Petitioner, Quinn. The Petitioner did not sufficiently apprize his employer, the City of Cincinnati, of his desire for a name-clearing hearing. The Sixth Circuit's decision is logical and concise. The Sixth Circuit has suggested that the exact words "name-clearing" hearing are not necessary. However, on the facts specific to this case it is clear that the Petitioner had not sought the name-clearing hearing in any specific manner.

The Sixth Circuit's ruling that the Petitioner's allegations were insufficient does not present an important question warranting this Court's review. In the present case, John Shirey, as the representative of the City of Cincinnati, the employer of Thomas Quinn, made a decision that he was going to terminate Mr. Quinn. Mr. Quinn asked that he not be discharged until certain investigations had been concluded. No reasonable public official confronted with the request not to discharge a public employee would interpret this as a request for any sort of hearing much less a name-clearing hearing. It easily can be presumed that the Petitioner resigned to avoid further public scrutiny of the events that were than under investigation. The Petitioner might reasonably argue that the City officials would know that Petitioner desired to keep his position of employment. It is not reasonable to

impose a duty upon them to divine the intention of the Petitioner that he sought to have a name clearing hearing.

CONCLUSION

For all the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Supreme Court, U.S.
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OCT 11 2002
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No. 02-389

In The
Supreme Court of the United States

THOMAS J. QUINN,

Petitioner,

v.

JOHN SHIREY, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

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QUESTIONS PRESENTED

1. Should this Court deny certiorari when the decision below did not decide the first question presented, there is no conflict between the circuits that could warrant review, and the case would make a poor vehicle for reviewing the question even if it were presented and warranted review?

2. Should this Court deny certiorari on the second question presented, which asks this Court to make a fact-specific determination regarding the sufficiency of the allegations of Petitioner's complaint?

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RULES

Supreme Court Rule 10 9

STATEMENT OF THE CASE

Petitioner Thomas Quinn ("Petitioner") filed this action against Respondents the City of Cincinnati ("City"), City Manager John Shirey ("City Manager") (collectively "City Respondents") and various other Respondents associated with Hamilton County, Ohio ("County Respondents"). Petitioner alleged that all Respondents deprived him of a liberty interest in his reputation without due process by terminating his employment under stigmatizing circumstances without providing a name-clearing hearing. After the City Respondents moved to dismiss the complaint on numerous grounds, Petitioner did not argue to the District Court that the motion should be denied because the City Respondents breached an "affirmative duty" imposed by the Constitution to inform Petitioner of an assumed right to a name-clearing hearing. After the District Court dismissed the complaint, Petitioner raised his "affirmative duty" theory for the first time on appeal to the United States Court of Appeals for the Sixth Circuit.

The Sixth Circuit affirmed the District Court's dismissal of the complaint, but did not decide whether Petitioner's "affirmative duty" theory was legally valid. Instead, the Sixth Circuit found that Petitioner had not claimed that he was unaware of his assumed right to a name-clearing hearing. Pet. App. 16a. The Sixth Circuit also ruled that Petitioner had failed to request a name-clearing hearing. *Id.* at 18a-19a. In light of this resolution, the Sixth Circuit declined to address the four alternative grounds presented by the City Respondents supporting affirmance. *Id.* at 20a.

STATEMENT OF THE FACTS

According to the complaint,[1] the City employed Petitioner as Director of the Metropolitan Sewer District ("MSD") beginning in 1992. Petitioner also had reporting responsibilities to the Hamilton County Commissioners.

From July, 1997, through April, 1998, various individuals made various statements regarding Petitioner and his performance of his job duties. Most of the alleged statements were made more than one month prior to Petitioner's eventual resignation. Many of the statements announced investigations and audits of the MSD and Petitioner's management of the MSD. Two statements involving a grand jury investigation and a report that "sewer tap-in waivers by Plaintiff 'took on the taint of favoritism'" are attributed to newspaper reports and not public officials.

The complaint alleged that: "Any and all of the previously described publicly reported actions and statements by Defendants which either expressed or implied that Plaintiff was a corrupt, dishonest and for these reasons incompetent public employee was or were totally false." The complaint did not allege that: (1) the various audits, investigations, and probes did not in fact occur; or (2) any public official publicly stated that Petitioner was corrupt or dishonest.

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[1] All quotations in this section are from the complaint. For the purposes of this petition, the City Respondents assume the truth of the "facts" alleged by the complaint.

In allegations material to the motion to dismiss, the complaint alleged:

> In the midst of the hostile environment created by the stream of public statements and reports by these City and County officials calling for Plaintiff's termination and announcing several civil and criminal investigations, **Plaintiff communicated to Defendant Shirey on April 28, 1998 that he was innocent of any of these allegations and requested that the City defer any action on the resolution to fire Plaintiff pending conclusion of these audits and grand jury investigations.** Plaintiff's request was based on the fact that pending the outcome of these public inquiries and hearings, it would be impossible for Plaintiff to meaningfully and publicly clear his name of the stigma that had been imposed on him by reason of Defendants' statements and reports.

The complaint did **not** allege that Petitioner was unaware of his "right" to a name-clearing hearing or that the City Respondents failed to inform him of this assumed right.

On April 28, 1998, the City Manager "personally" told Petitioner he would discharge Petitioner if he did not resign the next morning. The complaint concluded that this action by the City Manager constituted a constructive discharge.

Petitioner resigned the next day "for the welfare and benefit of the City and the County."

REASONS FOR DENYING THE WRIT

I. THE FIRST QUESTION PRESENTED DOES NOT WARRANT REVIEW BY THIS COURT.

A. The Sixth Circuit's Decision Does Not Raise The Question Presented.

The Sixth Circuit did not decide whether public employers have an "affirmative duty" imposed by the Constitution to notify employees of an assumed right to a name-clearing hearing. Instead, the Sixth Circuit ruled that Petitioner failed to allege that he was unaware of his assumed right to a name-clearing hearing. The Sixth Circuit ruled:

> Just as the plaintiff in that case [*Ludwig v. Bd. of Trustees*, 123 F.3d 404 (6th Cir. 1997)] did not claim he was unaware of his right to a name-clearing hearing, neither does Plaintiff in this case make such a claim. Despite the fact that to the extent we addressed the issue of the plaintiff's knowledge of his right to a name-clearing hearing in *Ludwig* at all, we expressly noted that the plaintiff in that case did not claim that he lacked such knowledge; Plaintiff in the instant case failed to allege that he did not know of his right to a name-clearing hearing.

Pet. App. 16a. Therefore, although the Sixth Circuit noted that it had never previously imposed "an affirmative duty on an employer to apprize the employee of his right to a name-clearing hearing," *id.* at 15a, the Sixth Circuit never decided whether such an "affirmative duty" existed in this case because Petitioner's allegations were insufficient to require the Sixth Circuit to reach this issue.

Because the decision below does not address the question presented in the petition, review should be

denied. *See Patrick v. Burget*, 486 U.S. 94, 99 n.5 (1988) (this Court ordinarily declines to consider questions presented in petition for certiorari that were not addressed by court of appeals).

B. The Circuit Decisions Asserted By The Petition Do Not Warrant Review.

The circuit decisions cited by Petitioner do not establish a conflict among the circuits warranting review by this Court. The unpublished Fourth Circuit decision in *Richardson v. Orangeburg School District, No. 1*, No. 94-2092, 1995 WL 255941 (4th Cir. May 3, 1995), does not hold that a public employer has an "affirmative duty" as asserted by Petitioner. *Richardson* involved a qualified immunity appeal where the Fourth Circuit found that the defendants had not afforded Richardson adequate process at a school board meeting. *Id.* at **2-3. Nor did *Lyons v. Barrett*, 851 F.2d 406 (D.C. Cir. 1988), hold that an "affirmative duty" exists. As for *Buxton v. Plant City*, 871 F.2d 1037 (11th Cir. 1989), the single sentence quoted by Petitioner from this opinion does not clearly establish the broad "affirmative duty" asserted by the petition. Indeed, the petition cited no other decisions from the Eleventh Circuit following *Buxton* or supporting the supposed existence of this broad "affirmative duty."

Nor do the cases Petitioner cited as rejecting the asserted "affirmative duty" support review. As previously explained, the Sixth Circuit did not reject or adopt Petitioner's "affirmative duty" contention in its decision. The First Circuit did not pass on Petitioner's "affirmative duty" contention in *Wojcik v. Massachusetts State Lottery Commission*, 300 F.3d 92 (1st Cir. 2002). In *Wojcik*, the First

Circuit simply stated that "the government must have failed to comply with the employee's request for an adequate name-clearing opportunity," which says nothing about whether an "affirmative duty" to notify the employee of the right to request a name-clearing hearing exists. *Id.* at 103. Similarly, the Fifth Circuit decisions in *Gillum v. City of Kerrville*, 3 F.3d 117 (5th Cir. 1993), and *Rosenstein v. City of Dallas*, 876 F.2d 392 (5th Cir. 1989), contain no holding regarding the asserted "affirmative duty."

The "affirmative duty" question is not sufficiently developed among the circuits. Therefore, there is no circuit conflict warranting review.

C. This Case Provides A Poor Vehicle For Reviewing The Question Presented.

Even if the first question presented warranted review, this case would present a poor vehicle for resolving the issue now raised by Petitioner. Petitioner waived his "affirmative duty" contention by failing to raise it before the District Court. Petitioner's complaint does not allege that the City Respondents failed to inform him of his assumed right to a name-clearing hearing or that he was unaware of his assumed right to such a hearing. Petitioner did not argue this "affirmative duty" theory in his memorandum in opposition to the City Respondents' motion to dismiss.[2] The District Court did not address this "affirmative duty" theory in its decision. Pet. App. 21a-24a.

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[2] Petitioner's memorandum did state that the Sixth Circuit had previously "noted that a public employer may be required to advise

(Continued on following page)

The City Respondents informed the Sixth Circuit that Petitioner's "affirmative duty" contention was "raised for the first time on appeal" and thereby waived. *Id.* at 6a. The Sixth Circuit did not decide whether Petitioner had waived this theory, presumably because it agreed with the City Respondents that Petitioner's failure to allege that he was unaware of his assumed right to a name-clearing hearing required dismissal without the need to address the validity of the "affirmative duty" contention. *Id.* at 16a.

Furthermore, the City Respondents raised four alternative grounds to affirm the District Court's decision before the Sixth Circuit. *Id.* at 20a. These grounds included: (1) the reasons the City Respondents requested Petitioner's resignation were never publicly announced; (2) the statements allegedly made by public officials were insufficient to support a deprivation of liberty interest claim as a matter of law; (3) Petitioner resigned and was not discharged; and (4) Petitioner was not constructively discharged (even assuming a constructive rather than actual discharge could be sufficient). Were this Court to grant review, one or more of these alternative grounds would likely make it unnecessary to resolve the constitutional question presented. *See Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C.*, 467 U.S. 138, 157 (1984) ("It is a fundamental rule of judicial restraint, however, that this Court will not reach constitutional questions in advance of the necessity of deciding them.") (citations omitted).

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employees of their right to name-clearing hearings," but did not argue that this had any bearing on the pending motion to dismiss.

This case does not present a good vehicle to decide the "affirmative duty" question, even were this question worthy of review.

II. THE SECOND QUESTION PRESENTED IS FACT-SPECIFIC AND MERITLESS.

The petition's second question seeks to have this Court review the Sixth Circuit's fact-specific determination that the complaint did not sufficiently allege that Petitioner requested a name-clearing hearing. The Sixth Circuit ruled:

> Even were we to agree with Plaintiff that because he only attempts to bring a liberty interest claim, he did not have to use the exact words "name-clearing hearing," in order for his claim to survive, his request still would have had to "sufficiently apprize" Defendants of his desire for a hearing to clear his name "following the dissemination of the statements." *Ludwig*, 123 F.3d at 411. Plaintiff fails to allege that he informed Shirey that he requested not to be fired so that he could clear his name. **Even accepting the allegations in Plaintiff's complaint as true and construing them in his favor, we do not see how Defendants could be required to interpret Plaintiff's request to keep his job until pending investigations concluded as being tantamount to a request for a name-clearing hearing.**

Pet. App. 18a-19a (emphasis added).

The petition makes clear that it seeks to have this Court review the Sixth Circuit's evaluation of the sufficiency of the complaint's allegations rather than any

general legal principle, despite the purported question presented. Petitioner asserts that: (1) other circuits have found requests similar to Petitioner's "request" sufficient (Pet. at 9); and (2) the Sixth Circuit's decision that Plaintiff failed to request a name-clearing hearing is wrong. (*Id.* at 10).

The Sixth Circuit's decision was consistent with the circuit decisions cited by Petitioner, *O'Donnell v. Barry*, 148 F.3d 1126 (D.C. Cir. 1998), and *Ersek v. Township of Springfield*, 102 F.3d 79 (3rd Cir. 1996). After citing both these decisions, the Sixth Circuit explained that Petitioner had "failed adequately to apprize Defendants in any way that he sought an opportunity to respond to the charges brought against him." Pet. App. 13a-14a n.2. The Sixth Circuit's reasoning is consistent with the D.C. Circuit's statement in *O'Donnell* that a plaintiff need not "make such a [name-clearing hearing] request explicitly, **as long as it is reasonably clear that what the plaintiff complains of includes the lack of a hearing**." *O'Donnell*, 148 F.3d at 1140 n.4 (citation omitted) (emphasis added). Petitioner's request that he not be discharged is distinguishable from the *Ersek* plaintiff's request for an opportunity to respond to the alleged false statements. *Ersek*, 102 F.3d at 85 n.8. More importantly, Petitioner's reliance on these decisions demonstrates that the issue he seeks to have this Court review is fact-specific.

The Sixth Circuit's fact-specific ruling that Petitioner's allegations were insufficient does not present an important question warranting this Court's review. The Sixth Circuit based its decision on the particular allegations of this particular complaint. Review should therefore be denied. Supreme Court Rule 10 ("A petition for a writ of certiorari is rarely granted when the asserted error

consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

Furthermore, the Sixth Circuit's ruling is plainly correct. No reasonable public official confronted with a request not to discharge a public employee (hardly an unusual occurrence) would interpret this as a request for any sort of hearing, much less a name-clearing hearing. The fact that Petitioner resigned further supports this conclusion; Petitioner presumably resigned to avoid further public scrutiny of these events and to avoid having the City Respondents take any public position on the reasons for seeking his resignation. Under these circumstances, it is inconceivable that the City Respondents should have understood Petitioner to desire a name-clearing hearing.

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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